FDIC

550 17th Street NW, Washington, D.C. 20429-9990 Division of Insurance and Research

September 15, 2020

MEMORANDUM TO: The Board of Directors

FROM: Diane Ellis
Director
Division of Insurance and Research

SUBJECT: Waiver of 12 CFR § 327.11(c)(13) Requiring that the Reserve Ratio Must be at Least 1.35 Percent for the FDIC to Remit an Institution's Remaining Assessment Credits

Summary and Recommendation

Staff recommends that the FDIC Board of Directors (Board) exercise its authority under 12 CFR § 303.12 to waive, for good cause, the provision of the FDIC's assessment regulations requiring that the reserve ratio must be at least 1.35 percent for the FDIC to remit the full nominal value of an insured depository institution's remaining assessment credits, as described in 12 CFR § 327.11(c)(13). The recommended waiver would enable the FDIC to remit to insured depository institutions (IDIs) the full value of remaining assessment credits, both small bank assessment credits and one-time assessment credits (OTACs), for the deposit insurance assessment period that ended on June 30, 2020, with an invoice payment date of September 30, 2020.

The regulations governing the remittance of small bank assessment credits provide that after applying assessment credits for four assessment periods, the FDIC will remit the full nominal value of an eligible institution's remaining small bank assessment credits in a single lump-sum payment to such institution in the next deposit insurance assessment period in which the reserve ratio is at least 1.35 percent.[1] Additionally, in the same assessment period that the FDIC remits the full nominal value of small bank assessment credits pursuant to 12 CFR § 327.11(c)(13), the FDIC shall remit the full nominal value of an institution's OTACs in a single-lump sum payment to such institution.[2]

[1] 12 CFR § 327.11(c)(13). Eligible institutions are defined in 12 CFR § 327.11(c)(1).
[2] 12 CFR § 327.35(c).

Concur:

Nicholas J. Podsiadly
General Counsel

As of June 30, 2020, the Deposit Insurance Fund (DIF) reserve ratio was 1.30 percent, below the 1.35 percent required for remittance of remaining assessment credits.[3] In total, $5.5 million remain in small bank assessment credits and $275,000 remain in OTACs. Good cause to waive 12 CFR § 327.11(c)(13) exists for several reasons: (1) the remaining credits are immaterial to the DIF balance; (2) remittance would simplify the FDIC's administration of the DIF; and (3) remittance would ensure predictability and could be meaningful for certain IDIs with these credits. For these reasons, explained in more detail below, staff recommends that the Board waive, for good cause, the provision of the FDIC's assessment regulations that requires the reserve ratio be at least 1.35 percent for the FDIC to remit the full nominal value of an IDI's remaining assessment credits.

Background

Small Bank Assessment Credits, OTACs, and the DIF Reserve Ratio

In March 2016, the FDIC Board approved a final rule (the 2016 final rule)[4] that, among other things, implemented the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requirement that the FDIC offset the effect of increasing the minimum reserve ratio of the DIF from 1.15 percent to 1.35 percent on IDIs with less than $10 billion in assets (i.e., small banks).[5] Pursuant to the 2016 final rule, upon reaching the statutory minimum reserve ratio of 1.35 percent, small banks were awarded assessment credits for the portion of their assessments that contributed to the growth in the reserve ratio from 1.15 percent to 1.35 percent (small bank assessment credits).[6] Also under the 2016 final rule, the FDIC would automatically apply small bank assessment credits up to the full amount of an IDI's credits or quarterly assessment, whichever is less, provided that the DIF reserve ratio exceeds 1.38 percent.[7]

As of September 30, 2018, the DIF reserve ratio reached 1.36 percent, exceeding for the first time, since passage of the Dodd-Frank Act, the statutorily required minimum reserve ratio of 1.35 percent. The FDIC notified all eligible institutions of their respective assessment credit amounts in January 2019.

In November 2019, the FDIC published a final rule (the 2019 final rule) that amended the assessment regulations governing the use of small bank assessment credits and OTACs, so that credits would be applied as long as the reserve ratio was at least 1.35 percent, instead of the 1.38 percent.[8] Also under the 2019 final rule, after applying small bank assessment credits for four quarterly assessment periods and as long as the reserve ratio was at least 1.35 percent, the FDIC would remit the full value of any remaining small bank assessment credits in lump-sum

[3] The DIF reserve ratio is equal to the DIF balance divided by estimated insured deposits.
[4] 81 FR 16059 (Mar. 25, 2016).
[5] Pub. L. No. 111–203, 334(e), 124 Stat. 1376, 1539 (12 U.S.C. 1817 (note)).
[6] *See* 81 FR at 16065-16066.
[7] *See* 81 FR at 16066.
[8] 84 FR 65269, 65272 (Nov. 27, 2019).

payments to each IDI holding such credits in the next assessment period in which the reserve ratio is at least 1.35 percent. At the same time that any remaining small bank assessment credits are remitted, the FDIC also would remit the nominal value of any remaining OTACs in lump-sum payments to each IDI holding such credits.[9]

With the DIF reserve ratio reaching 1.40 percent as of June 30, 2019, the FDIC first applied small bank assessment credits to offset institutions' second quarter 2019 deposit insurance assessments, which were due September 30, 2019. The reserve ratio remained above 1.35 percent for the next three assessment periods, and the FDIC applied small bank assessment credits to offset institutions' quarterly deposit insurance assessments through the first quarter of 2020, the fourth and final quarter of credit application.

The next quarterly deposit insurance assessment period ended on June 30, 2020, with payment due September 30, 2020. Prior to 2020, the DIF reserve ratio had not decreased since the fourth quarter of 2009. However, due to the spread of the coronavirus disease 2019 (COVID–19) and its economic repercussions, during the first half of 2020, insured deposit growth increased dramatically, far exceeding any deposit growth the FDIC has seen in the past,[10] resulting in a decline in the reserve ratio despite an increase in the fund balance.

As of June 30, 2020, the reserve ratio was 1.30 percent, below the 1.35 percent required for remittance of remaining assessment credits. Of the $765 million in small bank assessment credits originally awarded to small banks for their contribution to the growth in the reserve ratio to 1.35 percent, approximately $5.5 million in small bank assessment credits remain. Two IDIs have outstanding OTACs, totaling approximately $275,000.

Board Waiver Authority and Good Cause for Waiving 12 CFR § 327.11(c)(13)

The FDIC's regulations at 12 CFR Part 303 provide that "any provision of the rules may be waived by the Board on its own motion or on petition if good cause thereof is shown."[11] Staff is recommending that the Board exercise this authority to waive, for good cause, the provision of the FDIC's assessment regulations requiring that the reserve ratio must be at least 1.35 percent for the FDIC to remit the full nominal value of an IDI's remaining assessment credits, as described in 12 CFR § 327.11(c)(13). Absent the recommended waiver, the FDIC would not be able to remit the remaining assessment credits until a future quarter in which the reserve ratio

[9] 12 CFR § 327.35(c). The Federal Deposit Insurance Reform Act of 2005 (FDI Reform Act) required the FDIC to provide OTACs to IDIs that existed on December 31, 1996, and paid a deposit insurance assessment prior to that date, or that were successors to such an institution. The FDI Reform Act was included as Title II, Subtitle B, of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 2107(a), 120 Stat. 4, 18. *See* 12 U.S.C. 1817(e)(3).
[10] Total estimated insured deposits increased by 8.2 percent ($673.1 billion) in the second quarter and by 14.9 percent ($1.1 trillion) year over year. Excluding the quarters when deposit insurance coverage limits were increased in 2009 and 2010, this was the largest one-quarter increase in estimated insured deposits since quarterly reporting was adopted in 1991.
[11] 12 CFR § 303.12(b).

again reaches at least 1.35 percent. Good cause to waive this provision exists for several reasons.

First, the remaining assessment credits are immaterial relative to the DIF balance.[12] The remaining credits represents only about five thousandths of a percent of the DIF balance.

Second, the conclusion of both the small bank assessment credit and OTAC programs would simplify the FDIC's administration of the DIF. The small amount of remaining credits does not justify the ongoing administrative burden.

Third, the benefit of remitting the credits could be meaningful for certain IDIs. Remittance of the remaining assessment credits would ensure predictability for IDIs with remaining credits and could help support lending and liquidity of certain IDIs, important objectives given the significant and adverse economic impact of the spread of COVID-19.

Under these circumstances, good cause exists for the Board to waive 12 CFR § 327.11(c)(13) in order to remit the full nominal value of an IDI's remaining credits, both small bank assessment credits and OTACs, for the deposit insurance assessment period that ended on June 30, 2020 (with an invoice payment date of September 30, 2020).

Conclusion

For the reasons stated above, staff recommends that the Board waive, for good cause, the provision of the FDIC's assessment regulations requiring that the reserve ratio must be at least 1.35 percent for the FDIC to remit the full nominal value of an IDI's remaining assessment credits, as described in 12 CFR § 327.11(c)(13). The result is that the FDIC will remit the remaining assessment credits to IDIs with remaining credits in the deposit insurance assessment period that ended on June 30, 2020, with an invoice payment date of September 30, 2020.

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[12] The DIF balance was already reduced at year-end 2019 when a liability was recorded for the estimate of the remaining credits remittance.